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SUPREME COURT OF THE UNITED STATES.

No. ~~137~~ 142.

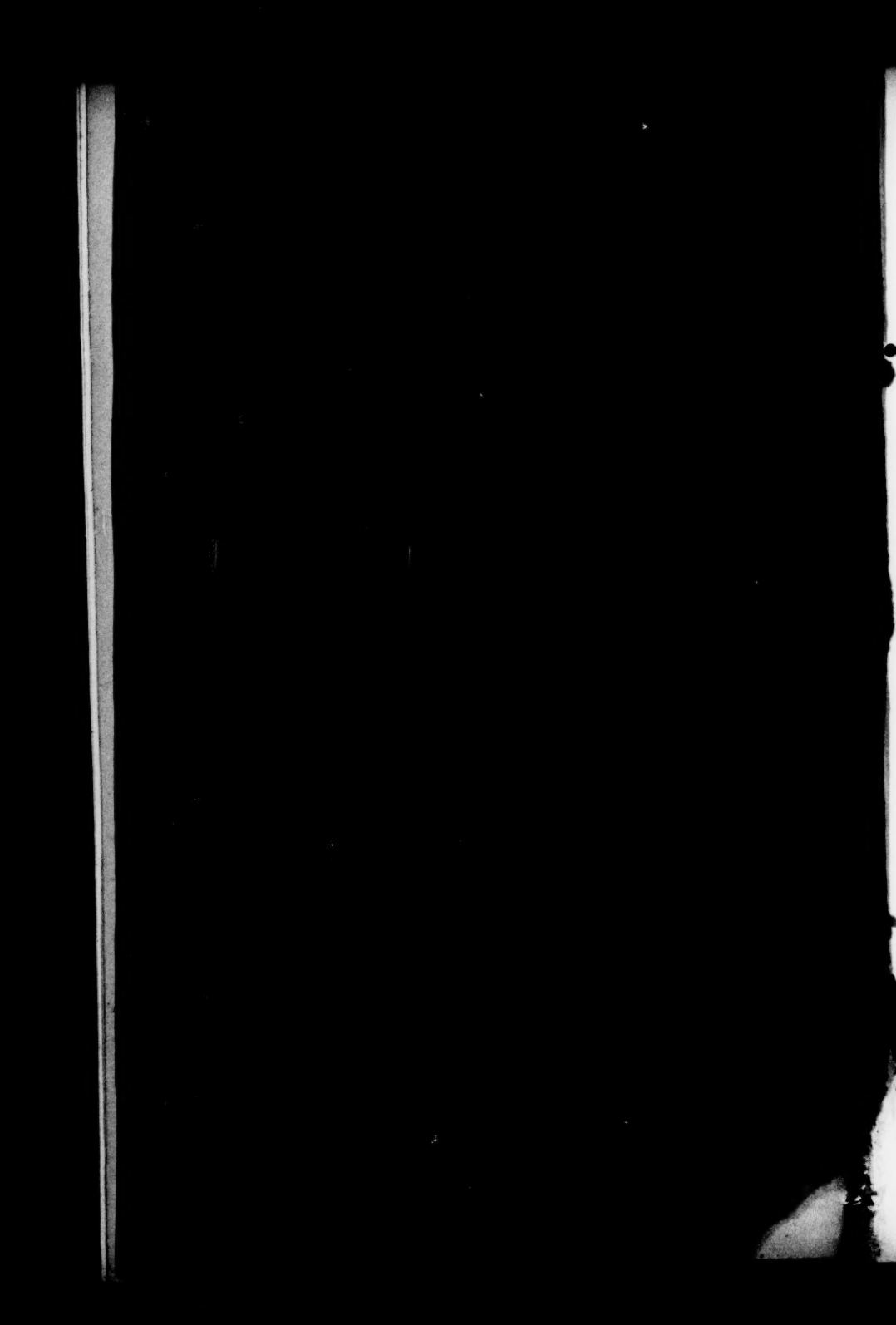
THE OFFICERS AND CREW OF THE UNITED STATES IRON-CLAD "WEEHAWKEN," JOHN ROGERS, COMMANDING, APPELLANTS,

vs.

THE STEAMER "ATLANTA."

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

GOVERNMENT PRINTING OFFICE.



367

SUPREME COURT OF THE UNITED STATES.

No. 227.

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vs.

THE STEAMER "ATLANTA."

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1 December term, 1863.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

At the district court of the United States, begun and holden at Boston, within and for the district of Massachusetts, on the first Tuesday (being the first day) of December, in the year of our Lord one thousand eight hundred and sixty-three, before the Honorable Peleg Sprague, judge.

THE UNITED STATES OF AMERICA
versus
THE STEAMER "ATLANTA." } By libel.—Prize.

The libel was filed in the clerk's office on the twentieth day of November, A. D. 1863, and is as follows:

November, 1863.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

In the matter of the steamer Atlanta in a cause of prize, before the Honorable Peleg Sprague, judge of the district court of the United States
2 within and for the district of Massachusetts.

On this nineteenth day of November, in the year of our Lord one thousand eight hundred and sixty-three, appears Richard Henry Dana, junior, esquire, attorney of the United States for the district of Massachusetts, in behalf of the United States of America, and in behalf of the commander, officers, and crew of the steamer Weehawken, of the navy of the United States, and in behalf of all other persons interested as captors of the property hereinafter described, and shows to this honorable court as follows:

That the steamer Atlanta has been captured within the admiralty jurisdiction of this honorable court by the commander, officers, and crew of the steamer Weehawken, of the navy of the United States, and are lawful prize to the United States and to the captors. That the said steamer Atlanta has been taken by the Secretary of the Navy from the captors, before the captors could send her into port for adjudication, for the use of the government of the United States, to wit, of the navy in the present war; and that the said Secretary is ready to deposit the value thereof in the treasury, subject to the order of this court in the present cause.

Wherefore, the said libellant prays this honorable court to condemn the said steamer Atlanta and her tackle, apparel, furniture, and stores as
3 lawful prize to the United States of America, and to the captors, and to order a distribution of the proceeds thereof, and such other relief to give as to the court shall seem meet; and to that end that due processes be issued, and due proofs taken, and due proceedings had, according to the course of courts of admiralty in causes of prize.

RICH'D H. DANA, JR.,
Attorney of the United States for the district of Massachusetts.

Thereupon, on the 20th day of November, A. D. 1863, a monition issued, under the seal of this court, commanding the marshal to give notice to all persons concerned that the foregoing libel had been filed, and that trial would be had thereon at a district court, to be holden at the United States court-house, in Boston, in said district of Massachusetts, on Tuesday, the 15th day of December, A. D. 1863, at ten o'clock a. m., and to give said notice by advertising the same in the Boston Daily Advertiser and the Boston Post, two of the public newspapers printed at Boston, and by posting a copy of the

same notice at the said court-house, in Boston, twenty days at least before said day of trial, and to make due return of his doings herein.

On which monition the marshal made return, videlicet:

4 U. S. OF AMERICA, *Mass. district:*

BOSTON, *November* 23*d*, 1863.

Pursuant hereunto I have given notice to all persons concerned that the libel within named has been filed, and that trial will be had thereon on the fifteenth day of December next by advertising the substance of the within monition in the Boston Daily Advertiser and Boston Post, two newspapers printed in Boston, in said district, and by posting up a copy of the same notice in the U. S. court-house, in said Boston, twenty days before the day within named for trial.

J. S. KEYES, *U. S. Marshal.*

And on the 15th day of December, A. D. 1863, after legal proclamation, the said steamer Atlanta was defaulted, and publication of testimony was ordered.

The following interrogatories to be administered to the officers of the prize were filed in court by the United States district attorney, on the 23d day of December, A. D. 1863, viz:

MASSACHUSETTS, *ss:*

December, 1863, the Atlanta in a cause of prize.

Interrogatories to be administered to the officers of the prize.

Please to state your name, age, service and rank in that service.

Were you on board the Atlanta at the time she was taken by the naval force of the United States in June last? If so, in what capacity?

How many guns had the Atlanta, and what was the calibre, weight
5 of metal, and construction of each?

Please describe the ram or projecting bow of the Atlanta.

Please describe the torpedo carried by the Atlanta, and the means for using the same.

How many men had the Atlanta on board as officers, marines, seamen, and engaged in all capacities on board?

Please to state the effect of the shot from the Weehawken on the Atlanta. Please describe each. Also, please to state what the effect was on the crew of the Atlanta.

What were the names of the armed vessels that came down in company with the Atlanta? Please state what guns they had, and of what construction, calibre, and weight of metal, and how many men on board, and whether they were steamers or sailing vessels, and if the former, whether screw or paddle, and their horse power, and whether built of wood or iron, and their tonnage, and their power of offence or defence. Did they take part in the action?

Upon the foregoing interrogatories the prize commissioner made the following return, videlicet:

6 BOSTON, *December* 22*d*, 1863.

Captain Webb and Lieutenant Alexander, late of the Atlanta, were this day brought before me to be examined upon the foregoing interrogatories, and severally refused to be sworn or to make answer to any interrogatories in this cause.

JOHN LOWELL, *Prize Com'r.*

A.

District court of the United States.

MASSACHUSETTS, *ss:* MAY 27, 1863.

Ordered, that whenever evidence is to be taken in any prize cause for the purpose of determining what public ships of the United States are entitled to share in the prize, the following interrogatories shall be put to the several persons whose testimony shall be taken. If the deponents are not within this district the interrogatories shall be administered and the answers written by, and the oath to the answers taken before, some judge or commissioner of a court of the United States, or consul or vice-consul of the United States, or notary public, or commanding officer of a public ship of the United States. If the deponent is the commanding officer of a ship, and there is no one of the persons above-named within convenient distance, his deposition may be taken before the officer next in rank on board his ship.

Attest: S. E. SPRAGUE, *Clerk.*

Deposition of Capt. John Rodgers, filed in court Dec'r 15, 1863.

District court of the United States.

MASSACHUSETTS, *ss:*

November, 1863, the Atlanta in a cause of prize.

Interrogatories to be answered by parties claiming to share in distribution of prize money in the above-entitled cause, or by witnesses examined in behalf of such claim.

1. Please to state your name, age, rank, and office, and the service you are now on.

Answer to first interrogatory. My name is John Rodgers; my age is 51 years; I am captain in the navy of the United States, and I am ordered as captain to the Dictator, an iron-clad vessel building in New York.

2. In what vessel were you, and in what capacity, at the time of the capture of the above-named ship?

Answer to second interrogatory. At the time the Atlanta was captured I was captain of the Weehawken, and on board of her.

3. State particularly all the part your vessel took in the pursuit or capture of the prize.

Answer to third interrogatory. The Weehawken was nearest to the Atlanta as she came down to attack her and the Nahant, and the Weekawken fired into the Atlanta and forced her to surrender. The first shot from the Weehawken struck the Atlanta upon the side of her casemate. It knocked a hole in this; it drove in about two barrels full of splinters of wood and iron, some of them of dangerous size; it wounded, I was told, every man belonging to a gun's crew, and in all prostrated between 40 and 50 men. Those who were not wounded fell upon the deck insensible, and remained insensible, I was told, about ten minutes. This blow demoralized the crew, I have heard, and they went below, leaving their guns. This shot from the XV-inch gun was cored, as it is technically called; that is, was hollow, a six-inch sphere being left hollow in it. Its weight was 400 pounds, and it was fired with 35 pounds of powder. At the next discharge two guns were fired, one of them XV-inch and the other XI-inch. One of these shot, I do not know which, struck the top of the pilot-house. The bars on the top and sides were crushed and driven down, wounding both pilots and one helmsman, and stunning them and the other helmsman. These men fell in a heap upon the floor of

the pilot-house and prevented any one from getting in. The first discharge took away the desire to fight, the second one took away the ability to get away, and the Atlanta hauled down her colors and hoisted the white flag. This white flag was not recognized as such, since we had no knowledge of how much injury we had inflicted, and because the smoke gave it a blue tinge. Upon repeated assurances that the flag was blue, which was, I believed, their battle flag, I ordered another discharge of the two guns. These, however, did not affect the result.

The Nahant, waiting to get close alongside, under the impression that only a very close shot would be effective against the Atlanta's armed
10 sides, did not fire a gun, but the captain, very much disappointed at the quickness of the result, ranged up close as the captain of the Atlanta was delivering to me his sword upon the deck of the Weehawken, and asked me: "Capt. Rodgers, why did he give up so soon?" The first discharge took place when the Weehawken was about 400 yards from the Atlanta, the second at about two hundred yards, and the third quite close. We were going towards the Atlanta at the time, and she had turned her broadside towards us, heading across the channel. In consequence of this the Atlanta ran aground after she had surrendered. The Atlanta fired at us or the Nahant several times. Capt. Downes thought that the Atlanta fired exclusively at the Nahant. I have no knowledge of this, but the officers and men at their stations below thought they felt the blow of a shot. If so, it was low upon the armor, under water, and could not be recognized. Sev-
11 eral dents were found in the armor under water; the others were received in Charleston harbor. We received no damage; neither did the Nahant.

4. What vessels of the navy were within signal distance of the vessel or vessels making the prize? Please explain in what sense you use the words "within signal distance," and what kind of signals you refer to.

Answer to the fourth interrogatory. The vessels within signal distance were the Monitor Nahant, and the wooden gunboat "Cimarren;" besides, two wooden gunboats of the rebels were within signal distance watching the event. Capt. Webb, commanding the Atlanta, told an officer of the squadron that it was strange one of them had not joined in the fight; that she carried a IX-inch rifle, and he had ordered her down. The Nahant was very close; once we touched her. The distance varied. The Cimarron, as agreed upon, unable to join in the fight, retired to the distance of a mile or more, but she was always within reach of the ordinary signal flags used in the navy.

12 5. Where was your vessel at the time the prize was boarded and possession was taken of her? Were you within signal distance? Please explain in what sense you use the words "within signal distance."

Answer to fifth interrogatory. The fight occurred in Wassaw Sound, Georgia, and the Weehawken was close alongside the Atlanta when she surrendered. We could talk together.

6. If your vessel was not within signal distance at the time of possession taken, how soon after possession taken did you come within signal distance?

Answer to sixth interrogatory. The vessel was within signal distance.

7. Was your vessel within signal distance of the vessel or vessels of the navy that made the prize at any time during the chase, and if so, at what time? Was she so when the prize was first sighted? Please to state in what sense you use the words "signal distance" in this connection, and what kind of signals you refer to.

Answer to seventh interrogatory. The Atlanta struck in consequence of injuries inflicted by the Weehawken.

13 8. Did your vessel exchange signals with or receive signals from any vessel of the navy engaged in the chase or making the capture? If so, what signals, and when, and was the chase in sight at the time?

Answer to eighth interrogatory. I was commanding officer. I received no signals, but I ordered the Nahant to get under way and prepare for action. The Cimerrone got under way, I think, without signal. After the action I made signal to her to come within hail, which she did. The prize was then close to me—within speaking distance.

9. If your vessel was not within signal distance of the vessel or vessels making the prize, please state whether you make a claim to a share in the distribution of the prize money. If so, on what ground do you put your claim? Please state all the facts in relation thereto.

Answer to ninth interrogatory. The prize was close, and the question requires no answer.

14 10. Please state any other facts within your knowledge which you have not yet stated tending to show what vessels of the navy were or were not within signal distance of the vessel or vessels making the prize?

Answer to tenth interrogatory. I have no facts to state in regard to any other vessels having any claim to share in the prize money.

11. Please to state what was the force of your vessel in tonnage, guns, size of guns, weight of metal, and to what class she belonged, and what was her construction and means of offence and defence. State the same as to the prize. State any other facts tending to show which was of superior force. State the same as to all vessels of the navy that were within signal distance.

Answer to 11th interrogatory. The Weehawken was a monitor, of 840 tons. I think, according to the navy register, she was armed with two guns, one of them XV and the other XI inch. The weight of the solid balls were, respectively, 440 pounds and 168 pounds. I do not think the department had classed these vessels. If size were the standard, they 15 would rank low; if force, they would rank higher. The Weehawken was a monitor of the ordinary pattern, with two guns. She was intended to use her bow as a ram. She had one turret only. I do not know accurately the tonnage of the Atlanta. She was larger than the Weehawken, I think, and she mounted four Brooke's rifles, two of them VII-inch, and two of them VI-inch, throwing, respectively, balls of 150 and 100 pounds. The Atlanta was plated with two layers of iron, one horizontal and one perpendicular, each two inches thick, making 4 inches of iron plate. Her sides were very thick. At the knuckle where the casemate was fastened to the hull 6 feet of solid wood. Her deck was, I think, three feet thick. Her captain told me that it was thought that if the Merrimac could withstand one monitor, the Atlanta could take two. He told me that the Confederates had fired at her sides and deemed them impenetrable. The Atlanta's casemates sloped upwards at an angle of only 29 degrees from the horizontal. This was thought to be an important advan- 16 tage. I annex drawings of the Atlanta, marked B and C. She was furnished with a torpedo fastened to her bow, and projecting from it about twenty feet. This was carried under water, and was loaded with fifty pounds of powder, as I was told, to explode upon percussion. She did not attempt to use this, but turned her side to fight her guns. Her guns were so pivotted that three of them could be used from either side. Capt. Webb thought that the Atlanta's shot would pierce our turret. We were not struck, but I think he was wrong. The authorities sent the Atlanta to attack the Nahant and Weehawken under the impression, it is evident, that she could take them both. The log mentioned that Gen'r'l

Beauregard was in one of the wooden gunboats which witnessed the fight. I believe that it was the general commanding the rebel army in the military department embracing Charleston and Savannah. The Nahant was a monitor similar to the Weehawken above described. The Cimarroni was a wooden gunboat. I do not remember now the exact armament nor her tonnage. She took no part in the fight. No other vessels were
17 in sight except I think, an unarmed tug belonging to the army which may have come through the shoal passages part of the way from Fort Pulaski after the first guns had drawn attention. Two rebel gunboats were in sight, and within signal distance. I was told that the Atlanta had cost the Confederacy more than a million of our dollars. This was said by one of the officers to me, and that this was exclusive of her very valuable stores.

JOHN RODGERS, *Capt'n U. S. Navy.*

The Brooke rifled guns have a wonderful efficiency attributed to them by the Confederates. They think them better than the Parrot rifles, and of course they have more penetration than any smooth bores of the same calibre. With their vessel it is evident that the authorities counted upon taking the Nahant and Weehawken, since she came down deliberately and advisedly to attack them. We had observed a tug reconnoitering us upon the two mornings preceding the attack.

JOHN RODGERS, *Capt. U. S. N.*

18 DISTRICT OF COLUMBIA, *Washington County:*

I, Nicholas Callan, a notary public in and for the above-named District and county, do hereby certify that on this twenty-first day of November, in the year eighteen hundred and sixty-three, John Rodgers personally appeared before , in the county and District aforesaid, and was by me duly sworn according to law, deposeth and saith that the annexed answers in writing and hereto attached are true, to the best of his knowledge and belief.

Witness my hand and official seal this 21st day of November, A. D. 1863.

[SEAL.] N. CALLAN, *Notary Public.*

19 *Certificate of Secretary of Navy as to the force of the capturing vessels, &c., filed in clerk's office, December 14th, 1863,*

NAVY DEPARTMENT, *Washington, 7th Dec.*, 1863.

SIR: In compliance with the request of W. L. Hodge, esq., I transmit herewith a certified copy of the appraisement of the captured steamer Atlanta, her log-book, and the following information concerning the tonnage, number and calibre of guns, and number of officers and men on board the capturing vessels.

	Number of officers and men.	Tonnage.	No. of guns.	Calibre.
Weehawken.....	84	844	2	One XV-inch and one XI-inch.
Nahant.....	85	844	2	One XV-inch and one XI-inch.
Cimaron.....	117	860	8	Three IX-inch, one 100 p'd'r, and four 24 p'd'rs.

Very respectfully,

GIDEON WELLES, *Sec'y of the Navy.*

R. H. DANA, Jr., Esq., *U. S. Dist. Attorney, Boston.*

20 *Description of the Atlanta from the Bureau of Construction of United States Navy, filed in the clerk's office December* 14, 1863.

The certificate of Mr. Lenthal, the chief of the Bureau of Construction, makes the tonnage of the Atlanta 927 6-100 tons, but he deducts from the depth of the hold 2 feet 1 inch for the extra thickness of the deck, and takes the depth at 13 feet ½ inch instead of 15 feet 1½ inches, as per the accompanying certificate of Commodore Stribbling, commandant at the Philadelphia navy yard, from actual measurement. This difference would increase the tonnage of the Atlanta to 1,075 8-95ths tons, and which should be considered her real tonnage under the rule for measurement per act of Congress.

Washington, 11 Dec., 1863.

WM. L. HODGE, *for Captors.*

Rule.—From extreme length deduct 3-5ths of beam; multiply width, breadth of beam, and depth of hold, and divide by 95.

21 *Dimensions of iron-clad ram "Atlanta."*

	Ft.	*In.*
Extreme length from outside to outside.....	191	2
breadth, from outside to outside.....	40	6
Both including woodwork and iron plating.		
Depth of hold from top of deck.....	15	1½
Thickness of deck.....	2	1

I certify the above to be the correct dimensions of the iron-clad ram "Atlanta."

C. K. STRIBBLING,

Nov. 30, 1863. *Commandant U. S. N. Yard, Philada.*

22 NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &c.,
December 4th, 1863.

SIR: In compliance with your request to give the U. S. tonnage of the "Atlantic" from the dimensions forwarded to you by the com'd't of the Philadelphia navy yard, viz:

Length.....	191 feet 2 inches
Extreme beam.....	40 feet 6 inches
Depth of hold to top of beam.....	13 feet 0½ inch

I find it to be 927 6-10 tons.

Respectfully your obed't serv't,

JOHN LENTHALL, *Chief of Bureau.*

JOHN L. HODGE, Esq., *Washington, D. C.*

23 *Copy of appraisal of the "Atlanta, filed in the clerk's office December 14th, 1863.*

U. S. NAVY DEPARTMENT, *December 7th*, 1863.

I hereby certify that the annexed is a true copy of the appraisal of the Confederate iron-clad steamer "Atlanta," on file in this department.

WM. FAXON, *Chief Clerk.*

Be it known that William Faxon, whose name is signed to the above certificate, is now, and was at the time of signing, chief clerk in the Navy Department, and that full faith and credit are due to all his official attestations as such.

In testimony whereof, I have hereunto subscribed my name and caused the seal of the Navy Department of the United States to be affixed, at the city of Washington, this seventh day of December, in the year of our Lord 1863, and of the independence of the United States the eighty-eighth.

[OFFICIAL SEAL.] GIDEON WELLES, *Secretary of the Navy.*

24 U. S. SHIP HOUSATONIC,
Port Royal Harbor, July 1st, 1863.

SIR: In obedience to your order of the 29th ult., we have made "a careful and accurate appraisement of the value of the captured Confederate iron-clad steamer 'Atlanta,' including therein her hull, machinery, ordnance, ordnance stores, provisions and small stores, and equipments," all of which we present below under those heads respectively:

Hull	$250,000 00
Machinery	80,000 00
Ordnance, ordnance stores, &c	14,022 91
Medical stores	20 00
Provisions, clothing, and small stores	1,012 85
Equipments and stores in the master's boatswain's, sailmaker's, and carpenter's departments	5,773 50
Total valuation	350,829 26

We are, sir, very respectfully, your obed't serv'ts,

WM. ROGERS TAYLOR, *Captain.*
ROBERT DANBY, *Fleet Eng'r.*
A. S. MACKENZIE, *Lieut. and Ordn. Off'r.*
CHARLES BORDMAN, *Carpenter, U. S. N.*

Rear-Admiral S. F. DUPONT,
Comm'g S. A. Blockading Squadron, Port Royal, S. C.

25 *Decree of condemnation.*

The steamer Atlanta, prize.

On this first day of January, in the year eighteen hundred and sixty-four, due notice having been given to all persons having any interest in the steamer Atlanta to appear and claim the same, and due proclamation having been made, and no person having appeared to make any claim thereto, and the evidence having been fully considered by the court, and it appearing to the court that the said steamer was captured by the steamers Weehawken and Nahant, vessels of the navy of the United States, on the seventeenth day of June, in the year eighteen hundred and sixty-three, and it further ap-

pearing to the court that the said steamer Atlanta, with all her armament and stores, were the property of certain persons unknown, and that said owners were at the time of the capture permanent inhabitants of and residents in territory of the enemies of the United States, and that the said steamer being armed, equipped as a ship-of-war, made a hostile attack upon the said steamers Weehawken and Nahant, and that the said
26 steamer, and armament, and stores are to be deemed and held to be property of the enemies of the United States and liable to capture and condemnation as such, it is ordered, adjudged, and decreed that the said steamer Atlanta and her armament, and stores be condemned as lawful prize.

P. SPRAGUE,
Judge of the United States for the district of Massachusetts.

Deposition of John Downes, taken before John Lowell, prize commissioner, on the twelfth day of December, A. D. 1863, upon the interrogatories established by the court for parties claiming to claim in any prize and upon one special interrogatory, taken at the request of the district attorney, to be used in this cause, in pursuance of the general order of the court relating to the depositions of captors and others in causes of prize, passed on the ninth day of September, eighteen hundred and sixty-
27 two, and of the order passed May 27th, 1863.

1. Please to state your name, age, rank and office, and the service you are now on.

Answer to the first. John Downes; forty-nine years old; commander in the United States navy; at present superintendent of gunboats in this vicinity.

2. In what vessel were you, and in what capacity, at the time of the capture of the above-named ship?

Answer to the second. I was attached to the monitor Nahant at the time of the capture of the Atlanta. I commanded the Nahant.

3. State particularly all the part your vessel took in the pursuit or capture of the prize.

Answer to the third. On the morning of the seventeenth of June last, at early dawn, we discovered the approach of a vessel from out of the Wilmington River at Savannah, which was at first mistaken for a wooden gunboat that had been in the habit of reconnoitering us at about that hour, but in a few moments her true character was ascertained to be an iron-clad ram. Both the Weehawken and our vessel at once began to clear for action. The Weehawken slipped her chain; I began weighing my anchor. The
28 Weehawken steamed out past us, standing seaward, she having been lying further up the river than we. As soon as our anchor was weighed we followed in the wake, both vessels taking that course for the purpose of gaining time to clear the ship thoroughly for action. The Weehawken turned towards the enemy before we did, and about the time she was turning the enemy opened fire upon my vessel. I followed in the Weehawken's wake as soon as my vessel was prepared for action. The Weehawken opened fire at about three hundred yards distance from the enemy, firing, I think, three shot or four shot, when the enemy struck, at which time I was about the same distance from her and approaching with all practicable speed, the intention being to lay her alongside before firing. The Weehawken fired two or three shot after she surrendered. When I discovered that she had surrendered, observing that the Weehawken had no boats to board her with, she having left them outside, I ran for my own boats, which were drifting up the river, and picking them up stood back to the enemy and sent

my executive officer with a boat's crew to take charge of her, which
29 he did. In the mean time Captain Webb, of the prize Atlanta, had boarded the Weehawken in his own boat and surrendered himself and vessel to Captain Rogers. We then discovered that the Atlanta was ashore.

4. What vessels of the navy were within signal distance of the vessel or vessels making the prize? Please explain in what sense you use the words "within signal distance," and what kind of signals you refer to.

Answer to the fourth. The iron-clad Weehawken and the wooden gunboat Cimaron were within signal distance. I understand signal distance to be the distance that we can read the signal flags used in the navy. There were no other vessels but those named within sight.

5. Where was your vessel at the time the prize was boarded and possession was taken of her? Were you within signal distance? Please explain in what sense you use the words "within signal distance."

Answer to the fifth. We were close up to her.

6. If your vessel was not within signal distance at the time of possession taken, how soon after possession taken did you come within signal
30 distance?

Answer to the sixth. She was.

7. Was your vessel within signal distance of the vessel or vessels of the navy that made the prize at any time during the chase, and if so, at what time? Was she so when the prize was first sighted? Please state in what sense you use the words "signal distance" in this connection, and what kind of signals you refer to.

Answer to the seventh. Our vessel was within signal distance all the time; we were not a thousand yards at any time distant from her.

8. Did your vessel exchange signals with or receive signals from any vessels of the navy engaged in the chase or making the capture? If so, what signals? and when? and was the chase in sight at the time?

Answer to the eighth. She did not. We were so near that we hailed each other from the vessels.

9. If your vessel was not within signal distance of the vessel or vessels making the prize, please state whether you make a claim to a share
31 in the distribution of the prize money. If so, on what ground do you put your claim? Please state all the facts in relation thereto.

Answer to the ninth. Our vessel was one of the joint captors.

10. Please state any other facts within your knowledge, which you have not yet stated, tending to show what vessels of the navy were or were not within signal distance of the vessel or vessels making the prize.

Answer to the tenth. I have stated all I think of.

11. Please to state what was the force of your vessel in tonnage, guns, size of guns, weight of metal, and to what class she belonged, and what was her construction and means of offence and defence. State the same as to the prize. State any other fact tending to show which was of superior force. State the same as to all vessels of the navy that were within signal distance.

Answer to the eleventh. The Nahant was about eight hundred tons burthen; she mounted two guns; one of fifteen-inch calibre, and one of eleven-inch; she was a monitor, third class; her battery was her only means of offence. She was not intended for sailing; she was armored like all
32 vessels of her class. The prize was of the tonnage of about one thousand tons; she was an armored, casemated vessel, built on the plan of the Merrimack; had a powerful ram; carried two seven-inch Brooks' rifles and two six-inch Brooks' rifles. She had an outrigger, with a torpedo attached, which extended about thirty feet forward of her bow, and under water, con-

taining, I think, about fifty pounds of powder. The Cimeron did not attempt to engage this vessel; I think it would have been useless; the Cimeron was what we term a double-ender gunboat; she mounted a one-hundred-pound rifle forward, an eleven-inch Dalgreen aft, four nine-inch guns, I think, in broadsides, and two howitzers of twenty-four pounds each. I do not think she ought to have been counted in. I think, but this is only a matter of opinion, that, considering the superiority of our armour, the Nahant and Weehawken were more than a match for the Altanta. Capt. Webb, of the Atlanta, thought otherwise, and said that if he had not got aground, he thought he would have whipped us. The Atlanta had about one hundred and forty-three men.

JOHN DOWNES.

33 Since signing this deposition it has occurred to me that during the above-mentioned action two vessels of the enemy were in sight, which, like the Cinamon, lay off and did not participate in the action. One of them was known by the pilot of the squadron to be a gunboat, and was said to carry heavy rifles; she came about as near as the Cimaron, and was about a mile distant. Whether the other was a gunboat we did not know; she may have been; she was said to have spectators on board.

JOHN DOWNES.

Monday, Dec. 14, 1863.

On the day of January, A. D. 1864, the following petition of W. L. Hodge, to be allowed compensation as agent for captors, was filed in court, videlicet:

To the Hon. Peleg Sprague, judge of the United States district court for the district of Massachusetts:

The undersigned respectfully states to the honorable court that he has been appointed as agent and counsel for the captors of the rebel iron-clad steamer Atlanta, as will appear by the certified copies of the original authority, signed by the officers and crew of the U. States vessels Weehawken and Nahant, hereto annexed, and marked A and B. That the said
34 prize case is now before your honorable court for adjudication, and that, in pursuance of said authority, the undersigned has attended to procuring and forwarding all the needful vouchers and evidence, and obtained and superintended taking the testimony in the case, and has made two journeys to Boston, in connection with the same. He therefore now respectfully asks your honorable court, in making the decree of condemnation and distribution, that it will be pleased to award to the undersigned the stipulated compensation of one per cent. on the full amount that may be awarded to the captors in the above case, and that the same shall be included in the costs of the proceedings in this case, as necessary expenses attending the prosecution of the same, and to be deducted, with other costs and expenses, from the amount awarded to the captors, and paid to the undersigned before the proceeds are distributed.

By existing laws, prize money can only be paid to the respective parties entitled to same, who remain in the naval service, by the paymaster of the vessel to which they may be attached at the time of such payment, and only personally to those who may have left such service, and to the executors or administrators of those who may have deceased, by the Fourth Auditor
35 of the Treasury.

The constant changes that are always occurring in the naval service will render it impossible for the undersigned to trace up the officers and crews of these vessels, scattered as they are during the eight months that have elapsed since the capture of the Atlanta, or the administrators,

&c., of those who may have died, and still more impossible for him to be present when they are respectively paid. The officers of these vessels have generally been changed and are on other duty and stations, and in the case of the Weehawken, she has been sunk, and between twenty and thirty of her officers and crew drowned, and the undersigned is therefore left without any resource for collecting the amount justly due him, under the voluntary offer of the captors, except under a decree of your honorable court, as herein requested.

All of which is respectfully submitted.

W. L. HODGE.

And on the 22d day of January, A. D. 1864, this court having heard the foregoing petition, the same was disallowed.

36 *Decree of distribution.*

The steamer Atlanta in a cause of prize.

On this eighth day of March, in the year eighteen hundred and sixty-four, a decree having been made in this cause, condemning the steamer Atlanta and her armament and stores as lawful prize, and the requisite evidence for determining what public ships of the United States are entitled to share in the prize, and whether the prize was of superior, equal, or inferior force to the vessel or vessels making the capture, having been taken, and all the evidence having been fully considered, and it appearing to this court that the prize was taken by the steamers Weehawken and Nahant, of the navy of the United States, on the seventeenth day of June, in the year eighteen hundred and sixty-three, and that the prize was of inferior force to the vessels making the capture, and that the steamer Cimmerone, no other vessel of the navy of the United States was within signal distance of the vessels making the prize, it is ordered, adjudged, and decreed that the steamers

37 Weehawken, Nahant, and Cimmerone, of the navy of the United States, and no other public vessels of the United States, are entitled to share in the prize, and that the prize was of inferior force to the vessels making the capture.

And it appearing that the steamer Atlanta and her armament and stores have been taken by the Secretary of the Navy for the use of the government, and that the sum of three hundred and fifty thousand eight hundred and twenty-nine dollars and twenty-six cents has been deposited by the Secretary of the Navy with the assistant treasurer at Boston, subject to the order of this court, as the value of the property so taken, and that the costs, fees, and expenses, taxed and allowed in this court, have been ordered to be paid therefrom, in the sum of seven hundred and eighty-nine dollars and thirty cents, ($789 30,) it is further ordered, adjudged, and decreed that the residue of said deposit, to wit, the sum of three hundred and fifty thousand and thirty-nine dollars and ninety-six cents, ($350,039 96,) be distributed, one half to the United States and one half to the said captors, and that the said residue be paid into the treasury of the United States, for the purpose of said distribution.

P. SPRAGUE,

Judge of the United States for the district of Massachusetts.

38 *Order to pay costs.*

District court of the United States, Massachusetts district.

The steamer Atlanta in a cause of prize.

MARCH 8th, 1864.

Ordered that there be paid from the proceeds of said vessels deposited

with the assistant treasurer of the United States at Boston, as costs, fees, and charges, the following sums to the following persons, to wit:

To Richard H. Dana, junior, esquire, proctor and counsel for the United States and captors, including fifteen dollars towards bills for printing prize interrogatories	$615 00
To Charles P. Curtis, jr., esq., counsel for captors	100 00
To John W. Keyes, esq., marshal	13 00
To John Lowell, esq., prize commissioner	25 00
To S. E. Sprague, esq., clerk of said court, for his fees, and including N. Callan's fee of $4 00, on J. Rodgers's deposition, and the express charge of $1 50 on log-book	36 30
	789 30

Attest:

P. SPRAGUE,
Judge of the United States for the district of Massachusetts.

39 *Prayer for appeal, filed in court March 8th, 1864.*

In admiralty. U. S. district court, Mass. dist., in re the Atlanta."

The officers and crew of the U. S. iron-clad Weehawken come and claim an appeal from the decree of this court in the above-entitled case to the Supreme Court of the U. States.

By their counsel.

CHAS. P. CURTIS, JR.

Wm. L. Hodge, of Washington, special agent and attorney of all the captors in the above-entitled case, comes and claims an appeal to the Supreme Court of the U. States from the decree of this court disallowing his claim for compensation.

CHAS. P. CURTIS, JR., *Proctor.*

Thereupon said appeals were allowed by the court.

40 UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, S. E. Sprague, clerk of the district court of the United States for the district of Massachusetts, hereby certify that the foregoing is a transcript of the record of said court.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said court, this fourteenth day of March, A. D. 1864.

Attest:

S. E. SPRAGUE, *Clerk.*

Filed March 16, 1864.

REC. 227—3

SUPREME COURT OF THE UNITED STATES.

No. 142.

OFFICERS AND CREW OF THE UNITED STATES IRON-CLAD WEEHAWKEN, JOHN ROGERS COMMANDING, APPELLANTS,

vs.

THE STEAMER ATLANTA.

ADDITION TO RECORD.

GOVERNMENT PRINTING OFFICE.

1 *Original transcript.*

Know all men by these presents, that we, the officers and crew of the United States iron-clad steamer Nahant, whose names are hereunto subscribed, do appoint Wm. L. Hodge, esq., of the city of Washington, or such other person as commander John Downes shall select, our agent or attorney, to represent our interest in the capture or prize money of the confederate iron-clad ram Atlanta; and we do hereby severally bind ourselves, our heirs and our executors, to pay for the services of [A. H.] such agent, in attending to [A. H.] said claims, one per centum of all the moneys which shall be collectively and severally adjudged to us as prize money; and we hereby request the proper officers of government to pay said fee of one per cent. to Wm. L. Hodge, esq., as a charge or fee, to be deducted from the award of prize money to be paid to us previous to paying over the said prize money for distribution.

John Downes, commander.
D. B. Harmony, l't commander.
Wm. W. Carter, acting master.
Chas. E. Clark, acting ensign.
Chas. E. Ricker, acting ensign.
2 F. T. Lovering, 1st ass't engineer.
C. Ellery Stedman, ass't surgeon.
T. H. Birdley, 2d ass't engineer.
Edwin Putnam, ass't paymaster.
Treuo Rafield, pilot.
William S. Neal, [A. H.,] 3d ass't engineer.
A. Michener, 3d ass't engineer.
Wm. H. Bartolle, surgeon's steward.
Chas. H. Gardner, paymaster's steward.
William Williams, yeoman.
Granville G. Spofford, master-at-arms.
Charles H. Smellen, [A. H.,] gunner's mate.
Thomas his ✕ mark. Thomson, [A. H.,] boatswain's mate.
William Brown, quarter-gunner.
George his ✕ mark. Cleming, quarter-gunner.
Charles H. Simpson, armorer.
William H. Krieger, officers' steward.
Abraham Bickfant, quartermaster.
William Ahrens, quartermaster.
John Farrell, quartermaster.
Royal Adams, ship's cook.
James Brown, officers' cook.
George Fitzgerald, cabin steward.
Alfred Rice, cabin cook.
Edmund Noor (or Noer,) [A. H.,] captain of the hold.
John Johnson, carpenter's mate.
James McGowan, seaman.

Rowland Martin, [A. H.,] seaman.
John B. McLane, [A. H.,] seaman.
William his ⋈ mark. Gulliver, seaman.
John R. Murray, seaman.
Alfred Smith, seaman.
3 John Bonett, seaman.
John his ⋈ mark. Norman, seaman.
——— ———, seaman.
John S. Bradley, ord. seaman.
John Murphy, ord. seaman.
James Kelly, ord. seaman.
William H. Wilson, ord. seaman.
Horatio N. Young, ord. seaman.
Solomon H. Jones, ord. seaman.
Joy Maurick, ord. seaman.
Daniel Ryan, ord. seaman.
George D. Wells, [A. H.,] landsman.
Charles H. Chase, landsman.
John J. Harris, landsman.
Dennis Sullivan, landsman.
Simon O'Neal, landsman.
George C. Patterson, landsman.
Martin Corrigan, landsman.
Henry B. Preble, landsman.
John Wood, landsman.
Bernard Doyle, landsman.
Frank S. Gile, landsman.
John S. his ⋈ mark. Bradley, 2d, landsman.
William his ⋈ mark. Barker, landsman.
Samuel Turner, landsman.
James Delaney, landsman.
Alvah F. Hunter, first class boy.
L. R. his ⋈ mark. Holden, 1st class fireman.
Robert his ⋈ mark. McCartney, 1st class fireman.
Horace his ⋈ mark. S. Brown, 1st class fireman.
Bernard his ⋈ mark. McGee, 1st class fireman.
William his ⋈ mark. E. Murray, 1st class fireman.
Abel his ⋈ mark J. Woodbine, 1st class fireman.

Alex. his ⋈ mark. Martin, 1st class fireman.

Moses his ⋈ mark. Mekslins, 1st class fireman.

John his ⋈ mark. Soles, 1st class fireman.

George his ⋈ mark. Lawson, 2d class fireman.

Andrew his ⋈ mark. M. Thorp, 2d class fireman.

James his ⋈ mark. Lee, 2d class fireman.

Michael his ⋈ mark. Duffy, 2d class fireman.

John his ⋈ mark. Mitchell, 2d class fireman.

Michael his ⋈ mark. Flynn, 2d class fireman.

William his ⋈ mark. Cooke, coal-heaver.

Patrick his ⋈ mark. Murphy, coal-heaver.

Joseph his ⋈ mark. Cummings, coal-heaver.

Francis his ⋈ mark. A. Dodge, coal-heaver.

John his ⋈ mark. Dennis, coal-heaver.

James his ⋈ mark. Burbank, 1st class fireman.

Witness to firemen and coal-heavers—
THOS. H. BORDLEY,
Second Ass't Engineer, U. S. Navy.

U. S. IRON-CLAD STEAMER NAHANT,
Port Royal Harbor, S. C., July 1st, 1863.

I, S. E. Sprague, clerk of the U. S. district court for Mass. district, hereby certify that the within document was before the said court at the time of the hearing of the prize case of the Atlanta.

S. E. SPRAGUE, *Clerk.*

DISTRICT OF COLUMBIA, *County of Washington, sct:*

I, Anthony Hyde, a notary public in and for Washington coun. District of Columbia, do hereby certify that the within writing, on pages Nos. 1, 2, 3, and 4, is a true copy of an original power of attorney now in possession of William L. Hodge and before me for the purpose of authenticating this transcript.

Witness my hand and notarial seal, at my office in Washington city, this fifteenth day of December, eighteen hundred and sixty-three.
[SEAL.] A. HYDE, *Notary Public.*

Filed 14 February, 1866.

5 Know all men by these presents, that all the officers and crew of the [A. H.] U. S. iron-clad steamer Weehawken, whose names are hereunto subscribed, do appoint Wm. L. Hodge, esq., of Washington, D. C., or such other person as Capt. John Rodgers shall select, our agent or attorney to represent our interest in the capture or prize money in the Confederate iron-clad ram Atlanta, and we do hereby severally bind ourselves, our heirs and executors, to pay for the services of said agent in attending to said claim one per centum of all the moneys which shall be collectively and severally to us adjudged as prize money, and we hereby request the proper officers of the government to pay [A. H.] said fee of one per cent. to said Wm. L. Hodge as a charge or fee to be deducted from the award of prize money to be paid to us, previous to paying over the said prize money for distribution.

Ship's No.*	Signature.	Rank or rating.	Witness.
	John Rodgers	Captain	
	Jno. J. Cornwell	Lt. com'dr.	
	Edw. M. Stein	Ass't surgeon	
[6]	Benj. W. Loring	Act'g master	
	Chas. C. Kingsbury	Act'g master	
	Joseph H. Pynchon	A. A. paymaster	
	Stephen Bolles	Act'g ensign	
	Jas. G. Young	A. 1st ass't eng'eer	
	David Hardie	2d ass. engineer	
	J. B. A. Allench	A. 2d ass't engineer	
	H. W. Merean	3d ass't engineer	
	Aug. Mitchell	3 ass't engineer	
	Levi Jump	1st pilot	
	C. Cooke	2d pilot	
50	Archer F. Hays (or Archon) [A. H.]	Paymaster's steward	Aug. Mitchel.
51	Benj. S. Birdsall	Surgeon's steward	Aug. Mitchel.
52	Henry Ernst	Master-at-arms	Aug. Mitchel.
53	Thos. H. Mason	Yeoman	Aug. Mitchel.
57	Jas. Hagan	B. mate	Aug. Mitchel.
58	Wm. E. Bayne	Q. mate	Aug. Mitchel.
59	Jacob Kemp	Q. master	Aug. Mitchel.
60	Wm. A. Munson	Q. gunner	Aug. Mitchel.
55	Chs. B. Brown	Q. master	Aug. Mitchel.
61	Geo. ⋈ Crotts	Q. gunner	Aug. Mitchel.
124	Jas. ⋈ Martin	Capt. of hold	Aug. Mitchel.
70	Thos. ⋈ Roberts	Q. master	Aug. Mitchel.
114	Christian ⋈ Anderson	Ship's cook	Aug. Mitchel.
118	Theodore ⋈ Hamilton	W. R. steward [A. H.]	Aug Mitchel.
100	Wm. H. ⋈ Williamson	Cabin cook	Aug. Mitchel.
92	Geo. ⋈ Brown	W. R. cook [A. H.]	Aug. Mitchel.
74	Gerhard ⋈ Russman	Cabin steward	Aug. Mitchel.
63	Mike ⋈ Rice	Seaman	Aug. Mitchel.

Ship's No.	Signatures.	Rank or rating.	Witness.
125	Thos. ⋈ Trueman	Seaman	Aug. Mitchel.
66	Thos. ⋈ Doran	do	Aug Mitchel.
72	Wm. ⋈ Brown	do	Aug. Mitchel.
[7]			
54	John ⋈ Hutton	do	Aug. Mitchel.
65	Frank J. ⋈ Wood	do	Aug. Mitchel.
62	Wm. A. ⋈ Davis	do	Aug. Mitchel.
97	Peter ⋈ Wilson	do	Aug. Mitchel.
69	Thos. ⋈ Piper [A. H.]	do	Aug. Mitchel.
71	Edw. ⋈ Christianun	O. seaman	Aug. Mitchel.
74	Thos. ⋈ Donovan	do	Aug. Mitchel.
73	Ebenezer ⋈ McKay	do	Aug. Mitchel.
88	John ⋈ O'Grady	do	Aug. Mitchel.
99	Wm. G. ⋈ Pike	do	Aug. Mitchel.
90	John ⋈ Walters	do	Aug. Mitchel.
75	Carl ⋈ Grandman	do	Aug. Mitchel.
81	Wm. N. ⋈ Burton	Landsman	Aug. Mitchel.
78	Matthew F. ⋈ Jackson	do	Aug. Mitchel.
80	Henry ⋈ Reed	do	Aug. Mitchel.
82	John ⋈ Russel	do	Aug. Mitchel.
116	Wm. ⋈ Orange	do	Aug. Mitchel.
98	John ⋈ Kerrigan	do	Aug. Mitchel.
134	John ⋈ Carpenter	do	Aug. Mitchel.
129	E. A. ⋈ Redding	do	Aug. Mitchel.
136	John W. ⋈ Shaw	do	Aug. Mitchel.
137	John ⋈ Rutledge	do	Aug. Mitchel.
120	Jas. T. ⋈ Brace	do	Aug. Mitchel.
121	Thos. ⋈ Bailey	do	Aug. Mitchel.
96	Sam'l A. ⋈ Seaman	do	Aug. Mitchel.
132	Dan'l ⋈ O'Brien	do	Aug. Mitchel.
	FIREMEN AND COAL-HEAVERS.		[A. H.]
83	Geo. M. ⋈ Leighton	1 class fireman	Aug. Mitchel.
108	Thos. ⋈ Stothers	do	Aug. Mitchel.
117	Jas H. ⋈ Gayhan	do	Aug. Mitchel.
102	Chs. F. ⋈ Davis	do	Aug. Mitchel.
104	Edw. ⋈ Carr	do	Aug. Mitchel.
[8]			
93	Edw. ⋈ Clarkson	do	Aug. Mitchel.
105	John ⋈ Hurley	do	Aug. Mitchel.
123	Jas. ⋈ Connolly	do	Aug. Mitchel.
122	Thos. ⋈ Mee	do	Aug. Mitchel.
110	Patric ⋈ Rurdon	2d class fireman	Aug. Mitchel.
109	John ⋈ Smith	do	Aug. Mitchel.
94	Alfred ⋈ Fletcher	do	Aug. Mitchel.
130	Edward ⋈ Mullen	do	Aug. Mitchel.
135	James ⋈ Collins	do	Aug. Mitchel.
87	David (or Daniel) [A. H.] ⋈ Feehun.	Coal heaver	Aug. Mitchel.
85	Albert W. ⋈ Baldwin	do	Aug. Mitchel.
86	Thos. ⋈ Hogan	do	Aug. Mitchel.
131	Robert ⋈ Nugent	do	Aug. Mitchel.
119	John ⋈ Haigh	do	Aug. Mitchel.
133	John ⋈ Ryan	do	Aug. Mitchel.
124	[A. H.] Maurice ⋈ Phelan		Aug. Mitchel.
113	Jos. ⋈ Grogan	2d class boy	Aug. Mitchel.
115	Lewis H. ⋈ Johnson	do	Aug. Mitchel.

I hereby certify that the above signatures comprise a full and complete list of the officers and crew of this vessel engaged in the capture of the Confederate iron-clad ram Atlanta.

(Signed) JOSEPH A. PYNCHON.
A. A. Paymaster.

June 24th, 1863, Port Royal harbor, South Carolina.

I, S. E. Sprague, clerk of the U. S. district court for Mass. district, hereby certify that the within document was before the said court at the time of the hearing of the prize case of the Atlanta.

S. E. SPRAGUE, *Clerk.*

DISTRICT OF COLUMBIA, *County of Washington, sct:*

I, Anthony Hyde, a notary public in and for Washington county, District of Columbia, do hereby certify the within writing on pp. Nos. 1, 2, 3, and 4 is a true copy of an original power of attorney now in possession of William L. Hodge and before me for the purpose of authentication of this transcript. Witness my hand and notarial seal, at my office in Washington city, this fifteenth day of December, eighteen hundred and sixty-three.

A. HYDE, *Notary Public.*

Filed 14 February, 1866.

Supreme Court of the United States.

No. 142.

THE OFFICERS AND CREW OF THE UNITED STATES IRON-CLAD "WEEHAWKEN," &c., APPELLANTS,

vs.

THE STEAMER ATLANTA.

In the case of the Rebel Iron-clad Atlanta, captured by the Monitor Weehawken, Captain Rodgers.

There is no dispute as to the facts of this case, and the only question before the Court is, whether she was captured by an equal or inferior force, or whether by a superior force? In the former case the whole value of the prize goes to the captors, and in the latter only one-half, and the other half to the navy pension fund. The court below decided that she was taken by a superior force, and therefore awarded only one-half the prize money to the captors, and from this decision the captors have taken this appeal. The evidence in the case shows fully and clearly all the facts connected with the capture, and they are most clearly and correctly

recapitulated in the opinion of Judge Sprague, the district judge.

The law of Congress declares that the "capturing force," if equal or inferior, shall entitle the captors to the whole value of the prize. Now the question is, what is a capturing force? Is it merely the vessel which took the only active part in the capture, or does it include the other vessels, present or within signal distance, who took no part in the action, and in no way contributed to the successful result? There were on the Union side three vessels: the Weehawken and Nahant, iron monitors, and the Cimmerone, wooden vessel. The Cimmerone was not allowed to come into action at all, as she was totally unfit to encounter such a vessel as the Atlanta, and would have been a helpless victim had she attempted it. The Weehawken, when she approached the enemy, was the leading vessel, followed by the Nahant. The Weehawken engaged the Atlanta, and compelled her to surrender before the Nahant could get into action or had fired a gun; she was therefore really the "capturing force," unaided by either of the other two vessels, and had these two both been absent, it is evident all the circumstances and events of the fight, and the result, would have been precisely the same. The Weehawken was notoriously a vessel of inferior force to her antagonist. It is said that the presence of other vessels has a great moral influence on the result, (even if these other vessels do not take an active part,) by discouraging the one side and encouraging the other. There might be some force in this argument had the Atlanta suddenly fallen in with the three vessels at sea, by the lifting of the fog, or the rising of the sun; but no such moral influence could have existed in this case, as the Atlanta came down deliberately to attack the two monitors, with the full conviction that she could take or destroy both, well knowing what their force was; besides which she was accompanied by two wooden gunboats armed with heavy rifled guns, and the rebel captain expressed his surprise that they did not assist him.

The lower court, in its decision, ruled out the Cimmerone,

as not being part of the "capturing force," and in so doing has conceded the whole principle. If the Cimmerone, taking no part in the action, is not to be considered part of the "capturing force," why should the Nahant be counted in, as she likewise took no part in the fight and did not contribute to the result any more than the Cimmerone did?

If the moral influence (by encouraging one party and discouraging the other) of the Nahant is estimated at ninety-nine and that of the Cimmerone at only one, the principle is the same; and on that basis, if she is counted out, so ought the Nahant to be. It is no reply to this to say that the Cimmerone was ordered not to take part in the action, for of that fact the enemy was, of course, ignorant; the fight was of such a few minutes' duration that there was no time for the enemy to see what part she was going to take.

Captain Downes, in his evidence, says the Atlanta fired at him, and the district court alludes to this as having thus diverted the fire from the Weehawken. Captain Rodgers evidently does not agree in this view of Captain Downes. Both vessels, when the Atlanta came down upon them, were in a narrow part of the channel, and had to run down to wider and deeper water, the Weehawken ahead, and she first turned and headed up the stream towards the enemy, passing the Nahant, still standing down, until the latter reached the point where the Weehawken had turned, and she then also turned and followed in the wake, but at such a distance astern that she could not come up and close with the enemy till he had surrendered to the Weehawken. Now it does not appear that the Atlanta fired at all while they were going down stream, and when the two monitors turned and ran up towards the enemy the Weehawken was the nearest and leading ship, and would naturally have been the object of the enemy's fire, and not the Nahant away astern. Through the two vessels being in range of each other, the balls that were fired at and missed the Weehawken would pass near the Nahant, and thus induce the belief that she was specially fired at; but the Nahant was not struck at all, and the Weehawken was, though not injured.

The officers of all these iron-clad monitors had a most severe and thankless duty to perform. They lived in iron dungeons, under artificial ventilation, never being able when at sea to appear on deck, as the sea was constantly beating over them, and without any hope and only a slender chance of prize money, as they were not cruising vessels; and this is the only instance in which any of them ever made a dollar of prize money. If these considerations of liberality are in any way to influence a decision, this is certainly a very strong case for the exercise of it. Nearly every prize taken during the war was by a superior force, as most of them were blockade-runners, so that in almost every case the United States, for the naval pension fund, has received the half of the amount, and that fund has obtained nine to ten millions from these captures, the income of which is five-fold of all demands upon it, so if it does not get the other half of the value of the Atlanta there is nobody hurt, nobody to complain, nobody to suffer.

It is believed there are no English precedents of a similar case, as, until recently, the British captors in all cases got the whole prize; nor have we had any similar case during the late war.

There is no question as to the distribution of the prize money, as the law of Congress is very express on this subject, that all vessels within signal distance shall participate. The Nahant and Cimmerone received their full share under the decree of the lower court, as they will of the other half if a favorable decision is made; and it is rather a curious fact, that the Cimmerone, though not allowed to take any part in the action, received more than three-sevenths of the prize money, and each of the monitors less than two-sevenths. The Cimmerone was of rather larger tonnage than either of the monitors, mounted more guns, though of less calibre, and had a larger crew, and hence, under the laws of distribution, she obtained the lion's share.

W. L. Hodge had been voluntarily appointed by the officers and crews of these vessels as their proctor or agent to

attend to all the business connected with the capture and legal proceedings, and they authorized a payment to him of one per cent. on their respective amounts of prize money, but the court below disallowed the claim. From this decision he appealed, and now asks this Court to award the one per cent. on the full amount of prize money that may be awarded to the captors.

REVERDY JOHNSON,
For Appellants.

Reg act 1800
Reg act now in force

UNITED STATES DISTRICT COURT—Jan., 1864.

THE IRON-CLAD RAM ATLANTA—PRIZE.

What co-operation constitutes a vessel one of "the vessels making the capture" for the purpose of determining the relative force of the captors and the prize?

SPRAGUE, J.—This vessel, an iron-clad war steamer, taken from the rebels in battle, has been condemned as lawful prize, and the question now is on the distribution. The main and difficult question is whether the entire value is to go to the captors, or half to them and half to the Government. The act of 1862, ch. 204, sec. 2, prescribes the rule thus: If the prize was of equal or superior force to "the vessel or vessels making the capture," it goes wholly to the captors; if of inferior force, it is divided equally between the United States and the "officers and men making the capture." Another section provides for the distribution of the whole or half adjudged to the captors in these words: "When one or more vessels of the navy shall be within signal distance of another making a prize, all shall share in the prize." In determining whether the captors shall have half or all, the court must first decide what vessel or vessels "made the capture" or "made the prize," and then compare the capturing force with the force of the prize. Then, having by this process adjudged the whole or the half to the vessels making the prize or capture, the court is to determine whether any and what vessels of the navy were within signal distance of the vessel or vessels that made the prize, and let them into participation.

What vessel or vessels in this case "made the capture?" The officers of the Atlanta, now prisoners of war at Fort Warren in this harbor, have refused to testify, so that I have not the benefit of their statements. But still, the evidence in the cause presents a clear account of this most interesting conflict—perhaps in its bearings on naval science the most significant battle in modern times, except that of the Monitor and Merrimack.

The Atlanta, originally a British steamer, powerful and fast, called the Fingal, had, early in the war, run the blockade of Savannah, and been converted by the rebels into an iron-clad war steamer, at a vast expense. She had a long low deck, with a casemate or covered iron-plated house in the centre, with sloping sides and ends, in which was her

battery. She had also a powerful ram, and, attached to her bow and carried under water, a torpedo charged with about fifty pounds of powder. Two steam vessels of our navy, of the type so novel and yet already so universally known as monitors, were guarding the Wassau sound, to prevent the egress of the Atlanta. These were the Weehawken, commanded by Captain John Rodgers, and the Nahant, commanded by Captain John Downes. Captain Rodgers was the senior and commanding officer. Each monitor had one revolving turret with two smooth-bore Dahlgren guns, one of fifteen-inch and the other of eleven-inch calibre. The rebels knew that these monitors were there, and knew their size and force, and the Atlanta, when fully ready, was sent down the sound for the purpose of capturing or destroying them. It would seem, too, that they had little doubt of their success. The Atlanta was accompanied by several steamers having passengers on board, to be spectators of the conflict. Two of these steamers were armed, and belonged to the rebel navy, but, being wooden vessels, they kept at a safe distance and took no part in the action. On our side, also, there was a wooden gunboat Cimmerone which was directed by Captain Rodgers to keep out of the action unless signaled specially.

It was at early dawn of the seventeenth of June, 1863, a little after four o'clock, that the Atlanta was descried coming down the sound. The monitors at once began to prepare for action. The Weehawken lay higher up than the Nahant. She slipped her cable. The Nahant weighed her anchor, Captain Downes thinking he might need it in the action, in case of injury to his motive power, and that he could prepare for action as well while weighing. To give themselves time to get fully ready, Captain Rodgers steamed slowly down the sound, directing Captain Downes to follow in his wake, the Weehawken having the pilot. Captain Downes followed in the wake of the Weehawken as soon as he got his anchor. This left him for a time nearer to the advancing enemy than the Weehawken. When fully ready the Weehawken turned toward the advancing enemy. Just as she turned, the Atlanta opened her fire on the Nahant. Her shot did not take effect.

The Weehawken rounded and steamed towards the Atlanta, the Nahant following in her wake. It was then seen that the Atlanta was stationary and lying partly across the channel. When within between three hundred and four hundred yards, the Weehawken slowed and fired her

fifteen-inch gun. Drifting with the tide, and under slow way, when within about two hundred yards, she fired both her guns, as nearly together as possible. Captain Downes acted on a different plan. He thought his fire would be most effectual close a-board, and made directly for the Atlanta at full speed, reserving his fire until he should be at close quarters. Captain Downes was never from the first more than a thousand yards separated from the Weehawken, and at this second discharge, was about the same distance from the Atlanta that the Weehawken was. Immediately after the second discharge from the Weehawken, the Atlanta hauled down her color and ran up a small white flag, in token of surrender. This was mistaken by the Weehawken in the smoke for a white and blue flag, which was the rebel battle flag, and the Weehawken fired both her guns again. By this time the Nahant was very near the Atlanta and ready to fire, but had discovered that she had surrendered.

Captain Downes ranged alongside, in natural disappointment, and asked why she surrendered so soon. The monitors had dropped their boats overboard to clear for action. The Nahant's boats were nearest, and she steamed off for them and picked one of them up, and her executive officer boarded the Atlanta and took possession of her. In the meantime, however, the commander of the Atlanta had lowered his own boat and went on board the Weehawken and had surrendered his sword to Captain Rodgers before the Atlanta was boarded by the Nahant.

After the surrender, we learned the effect of our shot partly from observation and partly by statements of the rebel officers. The first shot from the Weehawken, a fifteen-inch ball, cored, as it is termed, that is, with a hollow sphere in the centre, in this case of six inches, weighing four hundred pounds and fired with thirty-five pounds of powder, at a distance of between three and four hundred yards, struck the Atlanta upon the side of her casemate, knocking a hole in it, but without going through, and scattering over the enclosed decks great quantities of wood and iron splinters, some of dangerous size, wounding several men, and prostrating on deck, insensible, many others. The rebel officers told our officers that as many as forty persons were knocked down and either wounded or stunned for the moment by the effects of this shot, and that it demoralized the entire crew. The next discharge, at about two hundred yards distance, was from both guns, a fifteen-inch cored shot, and an eleven-inch solid shot, the latter weighing one hundred and sixty-

eight pounds. One of these, it is thought the fifteen-inch, struck the top of the pilot house, crushing and driving down the bars on the top and sides, wounding both pilots and one helmsman, and stunning the other helmsman as well as the wounded men. These men fell on the floor of the pilot house, and the rebel officers said prevented any one from getting up into it. The other shot struck the edge of the overhung knuckle, where the casemate fits to the deck, doing little damage. In the words of Captain Rodgers, the first shot took away the desire to fight, and the second the ability to get away. One of the two guns fired at the last discharge struck a port-stopper, breaking it in two, and driving its fragments through the port. No statement is made as to the effect of the fifth shot fired.

It is admitted by the officers of both monitors that the gunboat Cimmerone was all the while within signal distance and acting under the orders of the senior officer, and consequently entitled to participate in the distribution, as being "within signal distance of the vessel or vessels making the prize." The only question as to her is whether she is to be counted in as part of the capturing force; that is, whether she is to be deemed one of the vessels "making the capture," within the meaning of the statute, when we are comparing the force of the captors with that of the prize, for the purpose of determining whether the proceeds belong wholly to the captors, or are to be divided between them and the Government. In the recent case of the Cherokee I had occasion to examine the question of joint capture, and I refer to the results then reached, so far as they bear upon this case. The English statutes and Orders-in-Council do not make the distinction, in distribution, based on superiority or inferiority of force. The entire prize is given in all cases to the captors. Consequently, we cannot find in British decisions any direct aid in solving the present question. Neither have their statutes or Orders-in-Council, until the Russian war, made any distinction between actual captors and vessels in sight of the actual captors; but have simply given the entire prize to "the takers." The courts, in applying the rules, have made liberal constructions of the word "takers," on reasons of policy and equity, and have included in the term "takers," by construction, vessels within sight under such circumstances that they may be held to have afforded encouragement to the captors and intimidation to the enemy. This has naturally led the courts to speak of some vessels as actual captors, and others as constructive

captors. Still, as relative force was immaterial, and a vessel claiming to be an actual captor would usually be at least a constructive captor, and the shares of each would be the same, we do not find anywhere in the British decisions a definition or test of the difference between actual and constructive captors which is of practical value in the application of our own statute.

Our statutes, as I held in the Cherokee, recognized two classes—vessels making the capture, and vessels which do not make the capture, but are within signal distance of those that do. From this the inference is that the mere fact of being within signal distance, able and ready to give aid if required, does not bring a vessel into the first class. If it did, we should confound the distinction made by the statute, and treat as actual captors all who were within signal distance of actual captors. Another result would follow, that all vessels within signal distance of this second class of vessels would share in the distribution, though not within signal distance of the first class, because they would be within signal distance of some of the vessels which we should have held to be vessels making the capture.

I have no difficulty, therefore, in deciding that I must exclude the Cimmerone, in determining the relative force of the captors and the prize. In like manner, I exclude the gunboats of the rebels which were within signal distance of the Atlanta, but kept aloof.

It now becomes necessary to compare the force of the Atlanta with that of our monitors.

Beside the depositions, complete drawings of the Atlanta have been annexed to Captain Rodgers's evidence, and a report from the Bureau of Construction. The Atlanta's dimensions were as follows:

Length, 191 feet 2 inches;

Extreme beam, 40 feet 6 inches;

Depth of hold to top of beam, 13 feet and half inch.

These dimensions make her measurement tonnage 927 6-10 tons, or, if, as the agent of the captors contends, we must include the thickness of the deck, 1,075 8-95 tons. She was plated with two layers of iron, one horizontal and one vertical, each two inches thick, making four inches of plating. At the knuckle, where the casemate was fastened to the hull, her sides were six feet in thickness, of solid wood. Her deck was two feet one inch in thickness of plank, beside the iron covering. Her casemate was a little over one hundred feet in length, fastened to the hull, in about the middle

of the length of the deck, and covering its entire width, leaving an open deck of about forty-five feet at each end. This casemate had sloping sides and ends, at an angle of twenty-nine degrees from the horizontal, and three ports on each side, with heavy port-stoppers. The sides of the casemates were four inches of iron and thirty-six inches of solid wood. She mounted four guns, Brooke's rifled ordnance, two of seven-inch, throwing balls of one hundred and fifty pounds, and two of six-inch, throwing balls of one hundred pounds, the six-inch guns working in broadsides, and the seven-inch guns, one at the forward and one at the after-end of the casemate, working on pivots either as broadside on bow and stern guns, so that three of her four guns could be used on either broadside. She had a powerful ram of solid wood, strapped with iron bands, above water, and a torpedo at the end of a jointed crane, capable of being raised in the air or lowered under water, carried about twenty feet beyond the bow, and charged with some fifty pounds of powder, expected to explode on concussion. Her crew were one hundred and forty-three, all told.

The two monitors were as nearly equal, indeed as nearly identical, as it is easy to suppose war vessels to be. They were each 844 tons measurement, armed and arranged alike, with the usual low deck of the monitors, but little above the water-line, with one revolving turret. Their guns were of the same calibre, one of fifteen-inch, and one of eleven-inch, smooth bore Dahlgrens, the former throwing shots of 440 pounds solid, and 400 pounds cored, and the latter 168 pounds solid. The Weehawken had eighty-four men, and the Nahant eighty-five men.

In comparing the force of these novel engines of war the old rules of naval science are superseded. Not only on the vessels extraordinary and experimental, but the ordnance scarcely less so. The first shot from the Weehawken is said to have been the first iron shot of that size ever fired in naval warfare. I entertain no serious doubt that the force of the two monitors combined was superior to that of the Atlanta. (I do not judge merely by the result.) I am aware that a different course on either or both sides might have presented a different aspect. If the Atlanta had run at the monitors with her full force, instead of lying still to take and give fire, and her torpedo had exploded under one of them successfully; or, if she had struck both or either of them with the full force of her ram; or, if a better aim or more fortunate shot had injured the turret or steering or motive power of either mon-

itor; or, if the first two shots from the Weehawken had been less skillfully directed or less fortunate, or the Weehawken had reserved her fire to the last, and thus the Atlanta been able to use her battery steadily until at close quarters—under any or all these suppositions the length of the contest and the injuries on each side might have been very different, if the final result had been the same. I am to consider the means the vessels possessed, and not the use they made of them. Still, I am satisfied that for offense and defense, the two monitors with their batteries, acting together at the same time and under one command, must be considered of superior force to the Atlanta. They were each of 844 tons, and the Atlanta of about 1,000 tons. They had, one eighty-four and the other eighty-five men, and the Atlanta one hundred and forty-three men. The effective power of large ordnance against iron-clads has not yet been fully tested by experience, and in the present state of our knowledge the actual effect of the shot of the Weehawken must have much influence in forming our opinion. I am constrained to think that two fifteen-inch and two eleven-inch smooth-bore Dahlgrens, mounted on two vessels, capable of taking separate positions, are superior for offense to two seven-inch and two six-inch rifled Brook's in one vessel. And, in case of a fight on the decks by boarding or otherwise, we had the superiority of men. As to defense the Atlanta presented a larger surface than the monitors, and could be more easily hit; and the result showed that the walls of her sides and pilot house, however strong, were not in fact a protection against the shot of the monitors at that range. We do not know by experiment how well our hulls and turrets would have resisted her shot, but a construction which avoids shot is an element to be calculated as well as one which resists shot. Indeed, neither the agent of the captors in his argument, nor the two commanders in their depositions, appear to contend or to give an opinion that the Atlanta was equal of superior to the two monitors.

The agent for the captors contends that, in comparing the forces, the Weehawken alone is not to be counted. It is said that the only shot fired and the only damage done was by the Weehawken, and that her shot compelled the surrender; that the Atlanta was put beyond the possibility of fighting or escaping by the first two shots, and actually surrendered by reason of them, before the Nahant had in fact done anything. It is contended that it was not necessary that the Nahant should have been present; that the Atlanta did not

surrender by reason of intimidation from the presence and approach of the Nahant, but by reason of her own totally disabled condition. It is further argued that the Nahant must be considered only a constructive captor; that she was within signal distance, ready and eager and doing her best to aid in the battle, so situated as to afford encouragement to our side and intimidation to the enemy, but that such is the definition of a constructive captor, and that the facts go no further. It may be said, too, that the policy of the statute is to stimulate vessels to attack equal or superior vessels at once and alone; and that if a vessel does so and succeeds before others actually strike a blow, the entire prize should go to the captors; and that, in such case, it ought to be deemed immaterial how near the others may be, or on what theory of battle they reserved their fire.

In a question solely between conduct of the highest merit and the public treasury, the Government would doubtless desire a construction liberal to the officers and men who periled all in a strange and unwonted conflict and attained a success that has attracted the attention of the world. But my duty is limited to construing the statute. I cannot make a gratuity of the public property, however meritorious the object.

I shall decide the present case, on its exact and peculiar circumstances. I lay down no rule for other cases, nor do I say what variation from the facts of this case would have led to a different application of the statute. I am led to the belief that the Nahant must be considered so far a participator in the conflict of forces, as to be included in the comparison. The Atlanta came down to attack both the monitors, knowing they were together under one command and for one purpose. She calculated on their combined force, and governed herself accordingly. It is impossible for me to say now whether the Atlanta would have taken the same course if she had had only the Weehawken to deal with. Each monitor knew that the other was co-operating—not merely ready to co-operate, but actually taking part in the attack, during all the time within effective distance for firing, and part of the time at nearly the same distance from the enemy with her consort, and one as capable as the other of all acts of offense or defense. This is not all. It was the Nahant that the Atlanta fired at. The Nahant drew off the fire of the enemy, and engaged its offensive force, so far aiding her consort. It was known to those on board the Atlanta that the Nahant, apparently uninjured by their previous fire,

was coming upon the Atlanta at full speed, reserving her fire, though within easy range. This would have been enough to settle a doubtful question of surrender, if a doubt remained. One of the facts to be considered by the commander of the Atlanta, in determining whether and when to surrender, might well have been the demoralized state of his crew. How far may the knowledge that a second monitor of the same force with that from which they had suffered so terribly was within equal distance have contributed to this demoralization? How far did the co operation of the two monitors affect the course taken by the Atlanta in all respects, the training her guns on the Nahant, her lying still to present her broadside? How far did this co-operation affect the course taken by each monitor? If the Weehawken had not been there, or had not opened fire, would or would not Captain Downes have reserved his fire as he did? If the Weehawken had been alone, or with a vessel within signal distance capable of aiding but not just where the Nahant was and doing just what she was doing, would or not her course have been the same? If the Nahant had not diverted the fire of the Atlanta, what might have been its effect on the Weekawken? If Captain Rodgers's shot had been unsuccessful, might or might not, in a few minutes—almost seconds—the close discharge of the Nahant have been decisive?

The result to which I am brought is that in comparing the force of "the vessel or vessels making the capture" with that of the prize, I must include the Nahant with the Weehawken. I do this, as the result of the special circumstances of this case, without attempting to establish a test for determining who, under other circumstances, should be deemed actual captors.

The result is that half the net proceeds of the prize are to be given to the captors, and half to the United States, and that the vessels entitled to participate in the distribution are the Weehawken, Nahant, and Cimmerone.

Mr. Dana (U. S. Attorney) appeared for the United States, and Mr. Hodge of Washington, agent for the captors, submitted a written argument. Mr. C. P. Curtis, Jr., afterwards appeared for the captors.

Note.—The prize was taken by the Government for the use of the Department of the Navy, immediately after the capture, and before she was sent in for adjudication, at an appraisement, as follows:

Hull	$250,000 00
Machinery	80,000 00
Ordnance and ordnance stores	14,022 91
Medical stores	20 00
Provisions, clothing, and small wares	4,012 85
Equipments, stores in departments of master, boatswain, sailmaker, carpenter, &c	5,773 56
Total	$350,829 26